

77. (Amended) The method of claim 79 or 81 ~~55 or 69~~, wherein said substantially pure non-adherent population of progenitor cells is at least about one thousand-fold enriched from said animal cell suspension.

78. (Amended) The method of claim 79 ~~55~~, wherein said substantially pure non-adherent population of progenitor cells is at least about one hundred-fold enriched from said animal cell suspension.

REMARKS

Claims 55, 57-61, 63-66, 68-69, and 71-78 constitute the pending claims in the present application. Applicants add new claims 79-81. Support for the subject matter of these claims is found throughout the specification. No new matter has been entered. Applicants respectfully request reconsideration in view of the following remarks. Issues raised by the Examiner will be addressed below in the order they appear in the prior Office Action.

1. Applicants note with appreciation that the amendments to the claims and specification have been entered in full.

2. Applicants have amended the specification to reference the prior applications to which priority is claimed. Furthermore, in the prior Office Action, the Examiner alleged that the subject matter of the previously pending claims was not supported by the parent application, and thus that priority for the previously pending claims was the filing date of the instant application. Although Applicants disagree with the Examiner's determination regarding the priority date of the previously pending claims, Applicants have amended the claims to clarify any ambiguity as to the nature of the subject matter supported by the parent application. Applicants' amendments are made solely to expedite prosecution and to clarify the situation with respect to the priority date of each of the claims, and such amendments do not narrow the scope of the claimed subject matter. In light of Applicants' amendments, Applicants contend that priority of claims 55, 57, 69 (and claims dependent thereupon) is that of the filing date of the parent application.

3. Applicants' amendment to the specification to correct the typographical errors found on page 7, line 10 and page 20, line 18 is believed to obviate the objection to the specification.

Additionally, the specification is objected to for allegedly failing to provide proper antecedent basis for the claimed subject matter. Applicants respectfully traverse this objection. Applicants direct the Examiner's attention to the following passages which provide support for the recitation of "50%", "60%" and "70% pure", as well as for "100-fold" and "1000-fold enriched". "In a preferred embodiment the invention provides a method for preparing a substantially pure non-adherent population of progenitor cells which is a least about 50%, but more preferably about 60%, 70%, 80% or most preferably about 90% pure." (page 4, lines 1-3). "Preferably the enrichment of stem/progenitor cells from the original cell suspension obtained from the tissue is at least about 100-fold, but more preferably is at least about 1000-fold." (page 4, lines 18-20).

Applicants contend that the cited passages provide appropriate antecedent basis for the recited claim limitations, and reconsideration and withdrawal of this rejection are respectfully requested.

4. Claims 55, 63-65, 69, 77 and 78 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-5, 8, 15, 25 and 26 of U.S. Patent No. 6,326,201. Applicants will submit a terminal disclaimer, if necessary, upon indication of allowable subject matter.

5. Claims 55, 57-61, 63-66, 68, 69, 73, 74 and 76-78 are rejected under 35 U.S.C. 102(e) as allegedly being anticipated by Roberts et al. Applicants traverse this rejection to the extent that it is maintained in light of the amended claims.

In outlining the basis of this rejection, the Examiner has made various assumptions as to the disclosure of Roberts et al. For example, the Examiner asserts, without foundation, that "at least 90% pancreatic progenitor cells is deemed to be a 1000-fold enrichment." For the record, Applicants contend that such groundless suppositions are an inappropriate basis for this rejection. Nevertheless, whether or not the basis of this rejection is appropriate and supported by the disclosure of Roberts et al. is a moot point because, as outlined in detail in section 2 above,

Applicants contend that amended claims 55, 57 and 69 (and claims dependent thereupon) are entitled to the priority date of the parent applications. Given that Roberts et al. claims priority to April 10, 2000, Roberts et al. is not prior art against claims 55, 57 and 69 (and claims dependent thereupon). Applicants reiterate for the record that amendments to the claims are not in acquiescence of the rejection, but are made solely to expedite prosecution and clarify the rightful priority of the pending claims. Furthermore, Applicants note that the amendments to the claims do not narrow the scope of protection sought by Applicants. Applicants have added new claims 79-81, and these claims are directed to subject matter previously included within the scope of claims 55, 57 and 69.

The Examiner has alleged that claims directed to methods of preparing a population of progenitor cells derived from liver or skin are not supported by the parent application. However, with regard to the rejection under 35 U.S.C. 102(e), whether claims directed to this subject matter are entitled to the priority date of the present application or the parent application is immaterial. Roberts et al. specifically teach methods and compositions of pancreatic progenitor cells isolated from pancreatic tissue. Roberts et al. neither teach nor suggest that pancreatic progenitor cells which meet the limitations of the pending claims can be isolated from other tissues such as liver or skin. Applicants direct the Examiner's attention to the following definition provided in Roberts et al.:

“Pancreatic epithelial progenitor cells’ and ‘pancreatic progenitor cells’ refer to dividing progenitor cells **found in the pancreas** that have not yet committed to an essentially non-dividing stage of end differentiation.” (column 4, lines 45-48, *emphasis added*).

Given that Roberts et al. neither teach nor suggest methods and compositions directed to pancreatic progenitor cells isolated from tissues other than pancreatic tissues, Roberts et al. fail to anticipate claims 79-81 (and claims dependent thereupon).

In light of Applicants' amendments and arguments of record, reconsideration and withdrawal of this rejection is respectfully requested.

6. Applicants note with appreciation that the Examiner has indicated that claim 71, 72 and 75 would be allowable if rewritten in independent form including all of the limitation of the base claims and any intervening claims.

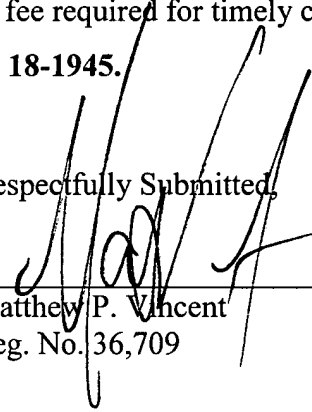
CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable reconsideration is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at 617-951-7000. Should an extension of time be required, Applicants hereby petition for same and request that the extension fee and any other fee required for timely consideration of this submission be charged to **Deposit Account No. 18-1945.**

Respectfully Submitted,

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